

No. 11024

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHESTER BOWLES, as Administrator of the
Office of Price Administration,
Appellant,

vs.

A. G. E. ABENDROTH, doing business as Candy
& Tobacco House,
Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavit of Charles Craig, dated Sept. 8, 1944	6
Amended Designation of Record on Appeal...	12
Application for an Order Requiring Respond- ent to Permit Inspection of Inventory and Records	1
Certificate of Clerk to Transcript of Record..	13
Inspection Requirement Directed to A. G. E. Abendroth	9

In the District Court of the United States
In the District of Oregon

CHESTER BOWLES, as Administrator of the
Office of Price Administration,
Applicant,

vs.

A. G. E. ABENDROTH, doing business as Candy
& Tobacco House,
Respondent.

APPLICATION FOR AN ORDER REQUIR-
ING RESPONDENT TO PERMIT IN-
SPECTION OF INVENTORY AND REC-
ORDS

Chester Bowles, Administrator of the Office of Price Administration, applicant herein, applies to this Honorable Court, pursuant to Section 202(b) of the Emergency Price Control Act of 1942 as amended by the Stabilization Extension Act of 1944 (Pub. L. No. 421, 77th Cong., 2nd Sess., 56th Stat. 23, as amended by Pub. L. No. 383, 78th Cong., 2nd Sess.) for an order requiring A. G. E. Abendroth doing business as Candy & Tobacco House, to permit inspection and copying by duly authorized employees of the Office of Price Administration of each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco during the month of March, 1942; also each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes

and tobacco to all customers of respondent between the dates of November 1, 1943 to and including August 22, 1944; also each and every original purchase invoice in possession of respondent showing purchases of candy and candy products, gum, cigars, cigarettes and tobacco from his various suppliers between the dates of November 1, 1943 to and including August 22, 1944 as described in the Inspection Requirement herein referred to. In support thereof, applicant respectfully represents as follows: [1*]

I.

Respondent is an individual doing business as a cash and carry wholesaler of candy, tobacco and other food products under the trade name of Candy & Tobacco House with his principal place of business at 725 Northeast Davis Street, Portland, Oregon, and within the jurisdiction of this Court.

II.

Jurisdiction of this proceeding is conferred upon this Court by Section 202(e) of the Emergency Price Control Act of 1942 as amended by the Stabilization Extension Act of 1944 (Pub. L. No. 421, 77th Cong., 2nd Sess., 56th Stat. 23, as amended by Pub. L. No. 383, 78th Cong., 2nd Sess.) hereinafter referred to as the Act.

III.

Under the provisions of Sections 202(a) and (b) of the Act of the Administrator is authorized to

*Page numbering appearing at foot of page of original certified Transcript of Record

obtain information by oath, affirmation, or otherwise, and to inspect and copy records and other documents, and inspect inventories, as he deems necessary or proper to assist him in the administration and enforcement of the Act and the regulations, orders or price schedules issued thereunder.

IV.

On or about the 16th day of August, 1944, the applicant, through his duly authorized attorney determined that in the enforcement and administration of the Act and of the General Maximum Price Regulation, as amended and supplemented (7 F. R. 3153) issued pursuant to the Act on April 28, 1942, by the Administrator of the Office of Price Administration, an investigation was necessary to discover whether or not respondent had complied and was complying with the provisions of the Act and of said orders.

Such an investigation was commenced on or about August 14, 1944, in the course of which duly authorized employees of the Office of Price Administration orally requested respondents to permit them to inspect and copy their duplicate original sales invoices showing sales of candy and candy products, gum, cigars, cigarettes and tobacco sold during the month of March, 1942; also each and every duplicate original sales invoice showing sales of candy and candy products, [2] gum, cigars, cigarettes and tobacco to all customers of respondent between the dates of November 1, 1943 to and including August 22, 1944; also each and every

original purchase invoice in possession of respondent showing purchases of candy and candy products, gum, cigars, cigarettes and tobacco from his various suppliers between the dates of November 1, 1943 to and including August 22, 1944, which records were in his control and possession and required by the regulation to be made and kept by the respondent. On that occasion, respondent refused to permit either the inspection or copying of said records or any part thereof.

V.

Thereafter on August 23, 1944, the applicant issued an Inspection Requirement, a copy of which is attached hereto, marked Exhibit A, directing the respondent to permit Charles Craig and Harold Bowen, as the duly authorized representatives of the Office of Price Administration, to inspect and to copy all or any part of the following documents: Each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco during the month of March, 1942; also each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco to all customers of respondent between the dates of November 1, 1943 to and including August 22, 1944; also each and every original purchase invoice in possession of respondent showing purchases of candy and candy products, gum, cigars, cigarettes and tobacco from his various suppliers between the dates of November 1, 1943 to and including August 22, 1944.

Said Inspection Requirement was personally served on A. G. E. Abendroth on the 29th day of August, 1944, at 725 North East Davis Street, Portland, Oregon, as shown by the affidavit of Charles Craig, attached hereto, marked Exhibit B, and by this reference made a part hereof. Respondent, as further shown by said affidavit, refused to permit the inspection and copying of records as required, stating to the said Charles Craig and Harold Bowen that they would have to get an order from the Court to check his records.

VI.

The applicant is informed and believes and therefore alleges that all of the records described in said Inspection Requirement constitute evidence [3] which is competent, relevant and necessary in the said investigation and that such investigation is essential to the enforcement and administration of the Act and of the General Maximum Price Regulation, as amended and supplemented (7 F. R. 3153) issued pursuant to the Act on April 28, 1942, by the Administrator of the Office of Price Administration. Applicant is informed and believes, and therefore alleges that said records described in said Inspection Requirement are now and at all times herein mentioned have been within the possession and control of the respondent.

Wherefore the applicant, Chester Bowles, as Administrator of the Office of Price Administration respectfully prays that

(a) An order to show cause be issued forthwith directing the respondent to appear before this Court on a day certain, to be fixed in said order, and show cause, if any there be, why an order should not issue requiring the respondent to permit the inspection and copying by authorized employees of the Office of Price Administration of the records described in said Inspection Requirement at such time as this Court may order; and

(b) The application of such other and different relief as may be necessary or appropriate in the premises.

By /S/ CECELLA P. GALLAGHER

Enforcement Attorney

/S/ F. E. WAGNER

District Enforcement At-
torney [4]

[Title of District Court and Cause.]

AFFIDAVIT

I, Charles Craig, being duly sworn, depose and say:

1. I am, and at all times herein mentioned have been, a duly authorized investigator of the Office of Price Administration. I make this affidavit in support of the applicant's petition herein for an Order Requiring Respondent to Permit Inspection of Inventory and Records.

2. On August 16, 1944, I went to the place of business of A. G. E. Abendroth doing business as

Candy & Tobacco House at 725 North East Davis Street, Portland, Oregon, and talked with a person who said she was the office girl. I presented my investigator's identification and explained to her that I wanted to see Mr. Abendroth's records for March, 1942, and she brought the records and laid them on a desk for me and said I could use that desk. I was checking these records when a gentleman who said he was Mr. Abendroth, came into the room and asked the girl what I was doing. I explained to Mr. Abendroth that I wanted to check their candy sales for March, 1942, and that the girl had given me the box containing these records, which I was checking. He said, "You can't check these records". I explained that the Emergency Price Control Act and the General Maximum Price Regulation state that the records shall be available to the Office of Price Administration. Mr. Abendroth said, "You can't check those records as we have litigation pending now and there is no reason for snooping over any more records." Mr. Abendroth then called and talked with someone over the telephone. [5] When he finished his conversation, he turned to me and said, "That's the story". I said, "What's that?" and he said, "You can't check no records here," and to go back and tell the party who sent me there the same thing. I then asked Mr. Abendroth if he had been talking with his attorney and he said, "Yes, that was my attorney." Mr. Abendroth left me and went out into the warehouse and I waited for him to question him further but as he did not return I went back to my office for further instructions.

3. On August 31, 1944, Harold Bowen, a duly authorized investigator for the Office of Price Administration and I called on A. G. E. Abendroth at 725 North East Davis Street, Portland, Oregon, to serve upon him an Inspection Requirement of the Office of Price Administration, requiring A. G. E. Abendroth, doing business as Candy & Tobacco House, to permit Charles Craig and Harold Bowen, representatives of the Office of Price Administration to inspect, at Mr. Abendroth's place of business, the following documents:

Each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco during the month of March, 1942;

Also each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco to all his customers between the dates of November 1, 1943 to and including August 22, 1944;

Also each and every original purchase invoice in his possession showing purchases of candy and candy products, gum, cigars, cigarettes and tobacco from his various suppliers between the dates of November 1, 1943 to and including August 22, 1944. and to permit the aforesaid representatives of the Office of Price Administration to copy all or any part of the said documents. Such Inspection Requirement was signed by James F. Brownell, Acting Price Administrator, and was issued the 23rd day of August, 1944, at Washington, D. C.

When Mr. Bowen and I entered Mr. Abendroth's office on the above date, August 31, 1944, he was counting money at his desk. He looked up and said "Well, what do you want?" I told him I had an Inspection Requirement to check his records on candy sales. Mr. Abendroth said that I couldn't check any more records, as they were in litigation now, and that we would have to get an order from the Court to check any more records. I left a copy of the Inspection Requirement with [6] Mr. Abendroth and returned to my office.

4. A. G. E. Abendroth did, at the time of the two visits above described, and has since consistently refused to permit the inspection and copying of any of the above described documents and records.

/s/ CHARLES CRAIG

Subscribed and sworn to before me this 8th day of September, 1944.

[Seal] /s/ W. A. STOCKMAN

Notary Public in and for the State of Oregon.

My Commission expires January 20, 1947. [7]

United States of America
Office of Price Administration

INSPECTION REQUIREMENT

To: A. G. E. Abendroth d/b/a Candy and Tobacco
House

In connection with an investigation to assist the
Price Administrator, Office of Price Administra-

tion, in the administration and enforcement of the Emergency Price Control Act of 1942, as amended, and especially of the following:

The General Maximum Price Regulation, as amended

You Are Hereby Forthwith Required to Permit Charles Craig and Harold Bowen representatives of the Office of Price Administration to inspect at your place of business the following documents:

Each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco during the month of March, 1942;

Also each and every duplicate original sales invoice showing sales of candy and candy products, gum, cigars, cigarettes and tobacco to all your customers between the dates of November 1, 1943 to and including August 22, 1944;

Also each and every original purchase invoice in your possession showing purchases of candy and candy products, gum, cigars, cigarettes and tobacco from your various suppliers between the dates of November 1, 1943 to and including August 22, 1944, and to permit the aforesaid representatives of the Office of Price Administration to copy all or any part of the said documents, and

You Are Further Required to Permit the aforesaid representatives to inspect the following:

now in your possession or under your control.

Issued this 23rd day of August, 1944, at Washington, D. C.

/S/ JAMES F. BROWNLEE

Acting Price Administrator, Office of Price Administration

Sections 202(a) and 202(b) of the Emergency Price Control Act of 1942 (Public Law 421—77th Cong, chapter 26—2nd Sess.), as amended, authorize the Price Administrator to make such studies and investigations of price and rent matters as he deems necessary or proper to assist him in prescribing any regulation or order under the Act, or in its administration or enforcement, and to require any person who is engaged in the business of dealing with any commodity, or who rents or offers to rent or acts as broker or agent for the rental of any defense housing accommodations, to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of such housing accommodations. Under Section 4(a) of the Act, wilful refusal to obey this inspection requirement is a violation of the law, and under Section 205(b) any person guilty of such violation will be liable to a fine of not more than \$5,000 or to imprisonment for not more than one year, or both. Under Section 205(a) such violation may also cause the issuance of a court order, the disobedience of which will render a violator subject to punishment for contempt of court. [8]

RETURN OF SERVICE

I certify that a duplicate original of the within Inspection Requirement was duly served*

X on the person named therein.

by leaving the said original at the principal office or place of business of the person named therein, to wit, at 29th.....
on the 29th day of August, 1944 at 2:33 P. M.

/S/ CHARLES P. CRAIG

Person Making Service

Commodity Investigator

Title

*Check method used.

[Endorsed]: Filed Sept. 9, 1944. [9]

[Title of District Court and Cause.]

AMENDED DESIGNATION OF RECORD

Comes now the plaintiff above named and as appellant in the above entitled action submits the following as his Designation of Record on the appeal of said matter to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition for order requiring respondent to permit inspection of records.
2. Plaintiff's Affidavits filed October 16 and October 18, 1944.
3. Defendant's Affidavits filed September 30 and October 18, 1944.
4. Order to Show Cause.

5. Order of Dismissal.
6. Transcript of Hearing on Motion for Order to Show Cause, October 2, 1944.
7. Transcript of Hearing on Motion to Dismiss, October 18, 1944.
8. Notice of Appeal.
9. Designation of Record.
10. This Amended Designation of Record.

Dated at Portland, Oregon, this day of June, 1945.

/s/ F. E. WAGNER

Of Attorneys for Appellant

[Endorsed]: Filed June 30, 1945. [10]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 11 inclusive, constitute the transcript of application for an order requiring respondent to permit inspection of inventory and records, amended designation of record, and certificate in cause No. Civil 2564, in which Chester Bowles, Administrator, Office of Price Administration is plaintiff and appellant, and A. G. E. Abendroth, doing business as Candy & Tobacco House, is defendant and appellee; that said transcript has been pre-

pared by me in accordance with paragraphs 1 and 10 of the amended designation of contents of the record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of that portion of the record and proceedings had in said court in said cause, in accordance with the said amended designation, as the same appears of record and on file at my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 5th day of July, 1945.

[Seal]

LOWELL MUNDORFF,

Clerk

By F. L. BUCK

Chief Deputy [11]

[Endorsed]: No. 11024. United States Circuit Court of Appeals for the Ninth Circuit. Chester Bowles, as Administrator of the Office of Price Administration, Appellant, vs. A. G. E. Abendroth, doing business as Candy & Tobacco House, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed July 9, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.